IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Defective Special Appeal No. 35 of 2006

Date of decision: 5th August, 2006

A.F.R. (Approved for Reporting)
~~Not approved for Reporting~~

Date

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Defective Special Appeal No. 35 of 2006

1. State of Uttaranchal through Secretary,
   Finance, Government of Uttaranchal,
   Dehradun.
2. National Savings Directorate,
   Uttaranchal Shasan, Dehradun,
   Through its Director.
3. Additional Director,
   National Savings Directorate,
   Uttaranchal Shasan, Dehradun.
4. District Magistrate,
   District Chamoli. ..... Appellants

Versus

Gabar Singh Rawat S/o Late Sri Raghuveer Singh Rawat,
R/o Village Bunga, Post Office Garur,
Tehsil Tharali, District Chamoli. ..... Respondent

Sri J. P. Joshi, Addl. Chief Standing Counsel for the appellants.
Km. Indu Sharma, Advocate on behalf of Sri Sharad Sharma, Advocate for the respondent.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Sri J.P. Joshi, Additional Chief Standing Counsel for the appellants.

Km. Indu Sharma, Advocate on behalf of Sri Sharad Sharma, Advocate for the respondent.

They are heard on CLMA No. 7368 of 2006 – a petition for condonation of the delay in filing the appeal.

2. The Special Appeal filed by the appellants against the order dated 09.03.2006 passed by the learned Single Judge in Writ Petition No. 757 (S/S) of 2004 is reported to be time barred by 81 days.

3. Sri J.P. Joshi, the learned counsel for the appellants, submits that in view of the grounds taken by the appellants in their affidavit filed in support of the Delay Condonation Application, the delay in filing the appeal deserves to be condoned.

4. Km. Indu Sharma, the learned counsel for the respondent, on the other hand, vehemently argued that the appellants have miserably failed in explaining the delay in filing the appeal.

5. The respondent, in spite of grant of opportunity in that behalf vide order dated 21.6.2006, has not filed any objection to the Delay Condonation Application, though a period of more than one month has elapsed since the passing of the order dated 21.06.2006.

6. On due consideration of the submissions of the learned counsel for the parties and the grounds taken in the Delay Condonation Application, we are satisfied that the appellants have succeeded in showing sufficient cause for the delay in filing the appeal.

7. Therefore, CLMA No. 7368 of 2006 is allowed and the delay in filing the appeal is hereby condoned.

8. Let the matter, now, be registered as regular ‘Special Appeal’.

9. The learned counsel for the parties are heard on the merits of the Special Appeal.

10. Km. Indu Sharma, the learned counsel for the respondent has raised a preliminary objection about the maintainability of the Special

Appeal on the ground that as the appellants have filed this Special Appeal against an 'interim order' passed in the writ petition, the Special Appeal is not maintainable.

11. Sri J.P. Joshi, the learned Addl. Chief Standing Counsel for the appellants submits that as the 'interim order' passed by the learned Single Judge has virtually decided the petition finally, the Special Appeal is maintainable.

12. Respondent Gabar Singh Rawat filed the writ petition for the following reliefs:

> "I. Issue a writ, order or direction in the nature of mandamus commanding the respondent to direct the respondents to consider the petitioner's case for regularisation and payment of regular salary as admissible to a class 3rd employee and not to disturb his services till the order of regularisation passed by the respondents.
>
> II. Issue a writ, order of direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.
>
> III. Award the cost of the petition to the petitioner."

13. The learned Single Judge passed the following 'interim order' in the writ petition on 09.03.2006:

> "Heard Sri Sharad Sharma, learned counsel for the petitioner and the learned Standing Counsel. Counter and rejoinder affidavits have already been exchanged.
>
> List in due course.
>
> The petitioner has alleged that he was initially appointed in the year 1986. Learned Counsel for the petitioner submits that although 20 years have already passed, but till date the opposite parties have not regularized the service of the petitioner and he is getting only the consolidated pay of Rs. 2500/-.

> However, the opposite parties are directed to regularize the service of the petitioner on the post of Bachat Pracharak within a period of three months from the date of presentation of the certified copy of the order and pay him regular pay-scale of the said post".

14. Thus, it is apparent that whatever was sought by the petitioner as 'main relief' in the writ petition, has been granted as 'interim relief' vide order dated 09.03.2006. Time and again, the Apex Court has strongly deprecated the grant of 'main relief' as 'interim relief'.

15. The Special Appeal has been filed under Rule 5 of Chapter VIII of the Allahabad High Court Rules, which reads as follows:

> **"5. Special appeal**.- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

16. A bare reading of the above-quoted Rule 5 reveals that this Rule provides an 'Intra Court Appeal' against every judgment passed by a Single Judge of the High Court other than those judgments, which are expressly excluded in this Rule.

17. The Apex Court, while considering the maintainability of a Letters Patent appeal against an 'interim order' under clause 15 of Letters Patent of Calcutta, Bombay and Madras and clause 10 of Letters Patent of Allahabad, Patna, Punjab and Haryana and Madhya Pradesh in the case of **Central Mine Planning and Design Institute Ltd. Vs. Union of India and another** reported in **(2001) 2 SCC 588,** observed in paras 10 to 14:

> "10. The above analysis of clause 15 of the Letters Patent will equally apply to clause 10 of the Letters Patent of Patna. It follows that an appeal shall lie to a larger Bench of the High Court of Judicature at Patna from a judgment of one Judge of the said High Court or one Judge of any Division Court pursuant to Article 225 of the Constitution of India. The following categories of judgment are excluded from the appealable judgments under the first limb of clause 10 of the Letters Patent:
>
> > "(i) a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a court subject to superintendence of the said High Court; in other words no letters patent appeal lies to the High Court from a judgment of one Judge of the High Court passed in second appeal;
> >
> > (ii) an order made by one Judge of the High Court in exercise of revisional jurisdiction; and
> >
> > (iii) a sentence or order passed or made in exercise of power under the provisions of Section 107 of the Government of India Act, 1915 (now Article 227 of the Constitution of India) or in exercise of criminal jurisdiction."
>
> 11. From the above discussion, it is clear that from all judgments except those falling under the excluded categories, an appeal lies to the same High Court.
>
> 12. The next question which needs to be considered is, what does the expression "judgment" mean? That expression is not defined in Letters Patent. It is now well settled that definition of "judgment" in Section 2(9) of the code of Civil Procedure has no application to Letters Patent. That expression was interpreted by different High Courts of India for purposes of Letters Patent. In Asrumati Devi v. Kumar Rupendra Deb Raikot2, a four-Judge Bench of this Court considered the pronouncements of the High Court of

Calcutta in Justice of the Peace for Calcutta v. Oriental Gas Co.3, the High Court of Rangoon in Dayabhai Jiwandas v. A.M.M. Murugappa Chettiar4, the High Court of Madras in T.V. Tuljaram Row v. M.K.R.V. Alagappa Chettiar5, the High Court at Bombay in Sonbai v. Ahmedbhai Habibhai6 as also the High Court at Nagpur, the High Court at Allahabad and Lahore High Court and observed as follows:

> "In view of this wide divergence of judicial opinion, it may be necessary for this Court at some time or other to examine carefully the principles upon which the different views mentioned above purport to be based and attempt to determine with as much definiteness as possible the true meaning and scope of the word 'judgment' as it occurs in clause 15 of the Letters Patent of the Calcutta High Court and in the corresponding clauses of the Letters Patent of the other High Courts."

13. Such an exercise was undertaken by a three-Judge Bench of this Court in Shah Babulal Khimji v. Jayaben D. Kania l. Fazal Ali,. J., speaking for himself and Varadarajan, J., after analysing the view of different High Courts, referred to above, observed as follows: (SCC p. 55, para 113)

> "The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense."

It was pointed out that "judgment" could be of three kinds:

> (1) A *final judgment.* –In this category falls a judgment by which suit or action brought by the plaintiff is dismissed or decreed in part or full;
>
> (2) A *preliminary judgment.* –This category is sub-divided into two classes:
>
> > (a) where the trial Judge by an order dismisses the suit, without going into the merits of the suit, only on a preliminary objection raised by the defendant/respondent on the ground of maintainability;

(b) where maintainability of the suit is objected on the ground of bar of jurisdiction, e.g., res judicata, a manifest defect in the suit, absence of notice under Section 80 and the like; and

(3) *Intermediary or interlocutory judgment.* –In this category fall orders referred to in clauses (a) to (w) of Order 43 Rule 1 and also such other orders which possess the characteristics and trappings of finality and may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding.

Elucidating the third category, it is observed: (SCC Headnote)

"Every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned."

14. In the instant case, we are concerned with the last mentioned category. From the above discussion, it follows that to determine the question whether an interlocutory order passed by one Judge of a High Court falls within the meaning of "judgment" for purposes of Letters Patent the test is: Whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case."

18. The learned counsel for the respondent, in support of the preliminary objection, placed reliance on the Division Bench Decision in the case of **Praveen Kumar Vs. Registrar, Firms, Chits, Societies, Uttaranchal and others** reported in **2005(2) U.D. 6.** The reason for holding the Special Appeal in the above case as 'not maintainable' is apparent from para 3 of the judgment, which reads as follows:

"3. Having heard learned counsel for the parties and having considered the materials placed on record, we are of the view that this appeal is liable to be dismissed. The impugned order is only an interim order passed by the learned Single Judge and it was open to the appellant to move the learned Single Judge himself to vacate or

> modify the impugned order. It is stated that the appellant (fourth respondent in the writ petition) had moved an application for vacating the order dated 25.02.2005, but it is still pending. In our view, the proper course open to the appellant was to press for disposal of the said application for vacating the order dated 25.02.2005 and to file appeal only if he was aggrieved by the order passed by the learned Single Judge. Without waiting for the disposal of the application for vacating the order dated 25.02.2005, the appellant ha filed this special appeal. We also notice that no irreparable injury has been caused to the appellant by the impugned order, as the learned Single Judge has allowed the election process to go on and only the declaration of the final result has been stayed. The learned Single Judge has taken into account the balance of convenience while passing the interim order. If the contentions of the writ petitioner are ultimately upheld, the election proceedings will be quashed and if the contentions of the petitioner are rejected, the election proceedings will be continued from where it was stopped and the results will be declared. Therefore, no irreversible situation has been created by the impugned interim order of the learned Single Judge. In such circumstances, this appeal cannot be maintained against the interim order passed by the learned Single Judge in the writ petition."

19. Thus, the above judgment in the case of Praveen Kumar (supra) does not lay down as universal law that no Special Appeal shall ever be maintainable against an 'interim order'. It was in the facts of that case that the Division Bench found that in view of the nature of the 'interim order' passed in that case, the Special Appeal was not maintainable. The decision in the case of Praveen Kumar (supra) is clearly distinguishable on the facts of the two cases and as such, is not applicable to the present case. The nature of the 'interim order' in the case of Praveen Kumar, which was the subject matter of that Special Appeal was entirely different from the nature of the impugned 'interim order', which is the subject matter of this Special Appeal.

20. Sri J.P. Joshi, the learned Addl. Chief Standing Counsel for the appellants has placed reliance on a Division Bench decision of the Allahabad High Court in the case of **State of U.P. and others Vs.**

Kumari Renu Tiwari and others reported in **(1993) 2 UPLBEC 1325** in support of his submission that the Special Appeal, in view of the nature of the interim order passed by the learned Single Judge, is maintainable against the impugned order.

21. In the case of State of U.P. and others Vs. Kumari Renu Tiwari (supra), the Division Bench of Allahabad High Court observed in para 13 as under:

> "13. The question of parity between the regular lecturers and the respondent-lecturers is directly involved in the writ petition. In the order under appeal the learned Single Judge has upheld the claim of parity even though in an ex facie manner. Thus, the order under appeal affects the merit of the controversy directly involved in the writ petition itself. The said order directly affects the appellants immediately. The order has all the trappings of a judgment. We are accordingly of the opinion that the instant appeal is maintainable."

22. To sum up, as the 'interim relief' granted by the learned Single Judge vide the impugned order dated 09.03.2006 has virtually decided the petition, the impugned order though passed as an 'interim order' is virtually a 'final order/judgment' leaving nothing in the writ petition to be decided now. We, therefore, do not find any substance in the preliminary objection of the learned counsel for the respondent about the maintainability of the Special Appeal. We have no hesitation in holding that the Special Appeal against the impugned order dated 09.03.2006 is maintainable.

23. Now, we shall examine the legality of the impugned order. It is apparent from the impugned order that the learned Single Judge has granted the 'main relief' sought in the writ petition as 'interim relief'.

24. The Apex Court, in the case of **State of U.P. and others Vs. Ram Sukhi Devi** reported in **(2005) 9 SCC 733** while deprecating in strong words the grant of 'main relief' as 'interim relief', observed in para 8:

> "8. To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single judge as to why the government order dated 26-10-1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable government order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case having been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See *CCE v. Dunlop India Ltd.* (SCC at p. 265), *State of Rajasthan v. Swaika Properties* (SCC at p. 224), *State of U.P. v. Visheshwar, Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa, Shiv Shankar v. Board of Directors, U.P. SRTC and Commr./Secy. To Govt. Health and Medical Education Deptt. Civil Sectt. v. Dr. Ashok Kumar Kohli.*] No basis has been indicated as to why learned Single Judge thought the courses as directed was necessary to be adopted. Even it was not indicated that a prima facie case was made out though as noted above, that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench and without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable, preferably within six months from the date of receipt of this judgment."

25. In view of the above-quoted dictum of the Apex Court, the impugned order dated 09.03.2006 is liable to be set aside and is hereby set aside.

26. The Special Appeal, therefore, is allowed with a further direction that Writ Petition No. 757 of 2004 (S/S) be listed for final hearing in the month of September, 2006.

27. No order as to costs.

(J.C.S. Rawat, J.) 05.08.2006

(Rajeev Gupta, C.J.) 05.08.2006

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